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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

JOHN L. CREECH,

Defendant and Appellant.

B285233

(Los Angeles County  
Super. Ct. No. BA435207)

APPEAL from a judgment of the Superior Court of  
Los Angeles County, Stephen A. Marcus, Judge. Affirmed.

Richard L. Fitzer, under appointment by the Court of  
Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief  
Assistant Attorney General, Lance E. Winters, Assistant  
Attorney General, Shawn McGahey Webb and Nima Razfar,  
Deputy Attorneys General, for Plaintiff and Respondent.

## INTRODUCTION

A jury convicted defendant John L. Creech of voluntary manslaughter for the killing of Gavin Smith. On appeal, defendant asserts that the trial court erred by prohibiting the defense from questioning the victim's wife about certain character traits of the victim, which defendant asserts could have assisted his self-defense claim. We find no error in the trial court's exclusion of that evidence, because the victim's wife did not say that the victim was violent and the verbal abuse she discussed was remote and not applicable to the facts of the case.

Defendant also requests that we review the court's in camera hearing under *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*). We find no error and affirm.

## FACTUAL AND PROCEDURAL BACKGROUND

On April 22, 2015, a grand jury returned a single-count indictment for first degree murder with the special circumstance of lying in wait. (Pen. Code, §§ 187, subd. (a), 190.2, subd. (a)(15).<sup>1</sup>) Defendant pled not guilty, and the case proceeded to trial.

### A. Prosecution evidence

#### 1. Background

Gavin Smith's wife, Lisa,<sup>2</sup> testified that she and Gavin were married in 1989, and they had three sons. At the time of his death in 2012, Gavin was 57 years old, six feet five and a half inches tall, approximately 212 pounds, and was very physically fit. He had been a college basketball player, and played on a

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

<sup>2</sup> We adopt the parties' usage and refer to many of the involved people by their first names.

national championship-winning team for UCLA in the 1970s. In 2012 Gavin was a division branch manager for Fox Studios.

While working as a stuntman before his marriage to Lisa, Gavin injured the lumbar area of his spine in a stunt, resulting in ongoing back pain. Gavin took prescription pain medication as a result of the injury, and by 2007 he had become addicted. On March 1, 2008, Gavin enrolled in an outpatient drug rehabilitation program called Matrix. In the summer of 2009, Gavin became a group leader assisting new patients at Matrix.

Chandrika Cade Creech married defendant in 2007.<sup>3</sup> She testified that defendant worked out a minimum of four times per week at the Powerhouse Gym in Chatsworth. Chandrika described defendant as “[t]oned, built, strong, body builder, you know, heavysset – very muscular.” In 2012, defendant “had huge muscles”; he “exercised consistently and also took steroids.”

In 2007, Chandrika had an alcohol abuse problem, and went to the Matrix recovery facility. Gavin acted as a co-leader there, which Chandrika described as “an unofficial coach or support system for the people attending the Matrix.” Chandrika met Gavin at Matrix in 2008; they became friends and eventually began a romantic relationship.

Defendant discovered Chandrika and Gavin’s relationship in 2008 from information on Chandrika’s mobile phone bill. Chandrika testified that when he found out, defendant “shoved me around or slammed my head into objects”; he was “really rough with me, just hustling me around and hitting me in the face.” Chandrika also said that defendant told her that he had gone to the Matrix and told Gavin to stay away from Chandrika. Chandrika ended the relationship with Gavin.

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<sup>3</sup>Chandrika testified under a grant of immunity.

Lisa testified that she became aware of Gavin's affair with Chandrika in July 2009. Lisa said she believed that Gavin ended the affair after Lisa discovered it, and she and Gavin went to marriage counseling.

2. *Defendant's comments about Gavin in 2010*

Sometime in 2010, Chandrika resumed contact with Gavin by emailing him from an email account that defendant was unable to access. In December 2010, however, defendant discovered these emails on Chandrika's phone. "He was livid," and he hit Chandrika. Chandrika said she did not report defendant's abuse to police because she was afraid of him. The jury was shown photos of Chandrika's injuries that defendant inflicted over the years of their marriage.

Lisa testified that in 2010, she also discovered that Gavin and Chandrika had rekindled their affair when Gavin showed Lisa some emails. In addition, an email from defendant said, "I'm going to get you, Gavin. Your wife is getting a copy of all these emails. You're fucked, you old prick." Gavin told Lisa that defendant "was a dangerous drug dealer" who had "threatened him." Gavin agreed to change his phone number and email address.

Lisa told their three sons that Gavin had been unfaithful, and that "he might be in some trouble." Lisa, their oldest son Evan (age 19 or 20), and their youngest son Austin (age 14 or 15) "decided to go over and speak with the Creech family" on December 7 or 8, 2010. Evan and Austin went to the Creech house while Lisa stayed in the car. Defendant opened the front gate; Evan described defendant as burly, very muscular, and intimidating. When the boys identified themselves as Gavin's sons, defendant sounded and looked angry. Defendant told Evan

and Austin that he was furious with Gavin for having an affair with his wife. Evan and Austin both cried, and Austin begged defendant to not hurt his father, saying, “I’m in 8th grade. I’m too young to lose my dad.” Evan testified that he also begged defendant to not hurt his family, and said he “must have apologized for my dad’s behavior a hundred times.” Chandrika testified that she was home at the time, and although she stayed inside the house, she could hear “one of the sons crying, and they were begging [defendant] not to kill their father.” Evan testified that defendant said that “his boys” had been following Gavin, and “we have him on lock.” Defendant knew where Evan and Austin went to school, where Gavin worked, and that Gavin went to Narcotics Anonymous.

Toward the end of the conversation defendant began to calm down, and he told Evan and Austin that they had saved their father’s life by coming over and talking to him. Defendant also said that if Gavin contacted Chandrika again, there would be problems. Evan interpreted this to mean that defendant would kill Gavin if he contacted Chandrika again. Chandrika testified that defendant told the boys that if Gavin stayed away from her he would be fine, and if Gavin did not stay away, defendant would kill him.

### 3. *The crime*

In April 2012, Chandrika learned that defendant was seeing an 18-year-old woman; defendant was 39. She and defendant decided to separate. Moving to separate residences was not financially feasible, so they stayed in the same house, but began sleeping in separate bedrooms.

On April 13, 2012, Lisa became aware that Gavin was having an affair with a woman named Melanie, and as a result,

Lisa asked Gavin to leave the family home. Gavin went to stay with a family friend, Janet Jackson, but remained in contact with Lisa. About three days before his death, Gavin told Lisa that his back was hurting to the extent that he could not paddleboard and he might be unable to golf on an upcoming trip.

Chandrika testified that she and Gavin resumed their romantic relationship in March or April 2012. In mid-April 2012, Gavin drove to pick up Chandrika near her house while she walked her dog. Defendant had followed Chandrika and saw Gavin. Defendant began running toward them, Chandrika quickly got into the car, and Gavin drove away. When Chandrika saw defendant later, “he was upset” but “he didn’t hit me or anything.” Defendant told Chandrika that he did not want her seeing Gavin.

Approximately two weeks later, on May 1, 2012, Gavin and Chandrika made plans to meet that evening. Reina Lim lived with Chandrika and defendant’s family, working as a caretaker for Chandrika’s ailing grandmother, who also lived in the home.<sup>4</sup> Before Chandrika left to meet Gavin, she asked Lim to watch the children while she went out. Chandrika testified that she also told defendant she was going out; he responded that if she did, he would have a friend follow her. Prior to May 2012, Chandrika and defendant had a service on their phone plan that would allow them to see the location of each other’s phones; they had used this service “on and off.” Defendant reactivated this service on May 1, 2012, without Chandrika’s knowledge.

Around 11:00 p.m., Chandrika left the house to meet Gavin, driving her Audi. They met near some commercial buildings where Chandrika “knew it would be quiet at that time

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<sup>4</sup> Lim testified under a grant of immunity.

of night.” Gavin had driven his black Mercedes to the location. Chandrika knew that defendant was trying to call her after she left the house, but she did not answer her phone. Chandrika left her phone in her car, and got into the passenger side of Gavin’s car. Shortly afterward, Gavin got out of the driver’s side of his Mercedes and sat in the passenger seat; Chandrika sat on his lap, and the two were kissing.

Meanwhile, defendant went to Chandrika’s grandmother’s room and told the grandmother and Lim that Chandrika had left the house and he wanted to find her. Defendant borrowed the keys to the grandmother’s Mazda minivan and left the house.

Chandrika testified that as she and Gavin were together in the passenger seat of Gavin’s car, defendant suddenly appeared outside, startling the couple. Defendant opened the car door, and Chandrika said, “What the fuck are you doing here?” She testified that defendant “went straight for Gavin,” and “repeatedly punched him in the face.” On cross-examination, Chandrika testified that defendant and Gavin yelled at each other for a moment before defendant began punching, which included Gavin yelling “fuck you” to defendant. Gavin and defendant “were fighting each other,” “but definitely [defendant] was the instigator.” Chandrika “kick[ed] my way out of the car, over the console of the passenger side into the driver’s seat and out that door.”

Chandrika got into the Mazda minivan because “it was right there” and “I wanted to get away. I was scared.” Chandrika moved the minivan “parallel to Gavin’s car,” and saw that defendant “had Gavin pinned down” so that Gavin could not move. Defendant was punching Gavin repeatedly with his right

hand, “too many times to count,” “more than a dozen” times.<sup>5</sup> Gavin was not fighting back or pushing defendant away; he was moaning and “wasn’t moving at all.” Chandrika yelled, “Stop. You’re going to kill him.” Defendant did not respond, so Chandrika yelled, “You’re going back to jail.” A moment later, defendant ran toward the minivan and Chandrika, saying, “You’re next.” Chandrika drove away. Gavin was still in the Mercedes when she left.

Chandrika drove home, locked all the doors, armed herself with a knife, and went into her grandmother’s room. Defendant walked home and knocked on a set of French doors. Defendant was “nervous, agitated,” and “[h]e was bloody. Everywhere. On his clothing.” Defendant did not have any injuries or marks on his face or eyes, but he had scratches and blood on the knuckles of his right hand.

Lim testified that when defendant came in, he asked Chandrika about the keys to the Audi, and Chandrika said she threw the keys into the back seat of the car. Chandrika testified that defendant asked her to drive him back to the scene, because “the keys were in the Mercedes.” On cross-examination, Chandrika testified that defendant said they should return to the scene because Gavin was in bad shape, and they should take him to the hospital. Chandrika drove defendant back, and dropped him off “between one and one-and-a-half blocks away” from the

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<sup>5</sup>On cross-examination, defense counsel played a video in which Chandrika apparently indicated to interviewing detectives that defendant hit Gavin five times. The transcript of the interview is not in the record on appeal, and at trial Chandrika denied that defendant hit Gavin only five times.



scene, “[b]ecause I was afraid of what I would see.” Defendant later returned home and told Chandrika that Gavin was dead.

Some of the blood from defendant’s clothing had gotten on Chandrika’s clothing, so she and defendant both burned their clothing in the fireplace. Chandrika testified that she did not tell the police about the incident because she was terrified of defendant. When Chandrika suggested calling police, defendant said that he would either tell police that she set Gavin up, “or he would fucking kill me, and I really believed he would.”

#### 4. *Subsequent events*

Jorge Valles testified that he met defendant in 2006 or 2007.<sup>6</sup> In 2012, Valles shared an apartment with his wife, and his landlord lived in the main house on the same property. In the early morning hours of May 2, 2012, Valles began receiving a lot of phone calls from a number that did not display any caller identification. After about the 15th call, Valles answered the phone; it was defendant, and he sounded drunk. Defendant said he had a problem and needed to talk. Thinking defendant was having a problem with his wife, Valles told defendant to come to his house. Valles walked outside, and Defendant drove up in Gavin’s Mercedes.

Defendant got out of the car; he was wearing a white tank top that was inside out, with red spots that looked like blood. Defendant’s knuckles on both hands were “swollen red” and “really bruised.” Defendant’s “face was red, and a couple bruises here and there, you know, but mostly like his hands were swollen. . . . They freaked me out.” Valles could not remember where on defendant’s body he saw bruises. Defendant opened the passenger door to the Mercedes, and inside was “something that

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<sup>6</sup>Valles testified under a grant of immunity.

was wrapped up in a blanket,” which “looked like a body.” Defendant wanted to park the Mercedes on Valles’s property, but Valles said no. Defendant “got really mad. He was really infuriated so I tried to calm him down, so he pushed me.” Valles offered to allow defendant to park the Mercedes at his parents’ house, so they went there, driving separate cars. There was a lot of blood inside the Mercedes. Defendant asked for glass cleaner and paper towels and began cleaning the Mercedes, including the steering wheel, the driver’s side door panel, and the center console. At some point, defendant “went up to the mountains” and then returned; the body was still in the Mercedes.

Defendant and Valles later left Valles’s parents’ property; defendant was driving the Mercedes with the body still inside, and Valles was driving a separate car. Valles followed defendant to a gated community. Defendant drove the Mercedes inside the gated portion, and Valles waited outside so he could take defendant home. Ten or 15 minutes later, a car approached and dropped defendant off near Valles. Valles drove defendant home, and defendant “opened the door of [Valles’s car] as he was leaving and threw [a] cell phone in my car,” and said, “Get rid of this phone.” Valles later threw the phone in the trash at a McDonald’s.

Stan McQuay testified that he is a competitive bodybuilder who trained at the Powerhouse gym in 2012. Defendant trained there as well, and a couple of times they had trained together. Defendant worked out regularly, three or four days a week. Defendant and McQuay were also friends outside of the gym.

McQuay testified that he received a call from defendant around 6:00 a.m. on May 2, 2012. Defendant “sounded frantic” and asked if he could come and park a car in McQuay’s garage;

McQuay agreed. McQuay lived in a gated community, and he opened the gate for defendant when he arrived. Defendant drove up in a black Mercedes and pulled into McQuay's garage. Defendant was "pretty frantic," and asked McQuay to help him cover the Mercedes with a car cover. Defendant said, "Please don't look in there," but McQuay saw that there was something covered in the front seat that looked "like another car cover" that was "balled up. Something was covered up."

Defendant asked McQuay to drop him off outside the gate. As they drove to the gated entrance McQuay asked defendant what was going on, and defendant said, "I caught my wife with another guy and I . . . got in a fight with him." Defendant "had blood all over him." Near the gated entrance, defendant got into another car. McQuay went back home, and said that he never looked inside the car, but he was aware there was a body in the car.

When defendant did not come back to move the car, McQuay began calling defendant, but defendant was not answering his calls. After about three days, McQuay reached defendant and asked him to move the car; defendant said he was "trying to get to it." McQuay testified that he told defendant that if he did not come get the car that day, McQuay would call the police.

On May 4, 2012, defendant asked Lim to rent a U-Haul van for him; Lim knew the van was being used to transport Gavin's body. McQuay had given defendant the remote control to open the gate to his community and his garage door. McQuay was home when he heard the garage door opening, and he saw a white van outside. McQuay was upset that defendant had not brought a trailer to take the car away. Defendant told McQuay

not to worry, because “I’m going to take care of this.” McQuay went inside the house, but looked into the garage as defendant was there, and saw that defendant had pulled the body out of the car. McQuay was upset, and went back into the house. Defendant left in the van, but the Mercedes remained in McQuay’s garage.

On May 4 or 5, 2012, the 18-year-old high school student defendant was dating, Lauren Pieper, noticed that defendant’s hands had cuts and scrapes on them. Defendant told Pieper that he had fallen off a three-wheel vehicle. On cross-examination, Pieper agreed that she told detectives she saw injuries on defendant’s arm and leg; she did not see any injuries on defendant’s face. Around the same time, Pieper told defendant that the father of a friend from her high school was missing, and showed him a flyer regarding Gavin’s disappearance. Defendant said that was the man Chandrika had been dating.

On June 21, 2012, defendant asked Lim to rent a storage unit for him, telling Lim that he would use it to store motorcycles. McQuay testified that “two gentlemen came with a truck and trailer to” retrieve the Mercedes from his garage. A smell “like rotting flesh” remained in the garage for several days.

##### 5. *The investigation*

Gavin was supposed to pick up Austin and take him to his high school on the morning of May 2, 2012. Gavin never showed up, and Austin called a friend to take him to school. When Lisa picked up Austin after school, Austin told Lisa that Gavin had not showed up that morning, and Gavin had not answered Austin’s calls or texts. This concerned Lisa, because it was unusual behavior for Gavin. Lisa had Austin call Gavin’s office, and they discovered that Gavin had not gone to work that day.

Lisa called Jackson, who said the last time she saw Gavin was when he left the house the night before, May 1.

Lisa filed a missing person report at a local sheriff's station. As deputies began investigating, Evan and Austin told them about their 2010 conversation with defendant. Lisa called Gavin's sponsor at Matrix, and asked for contact information for Chandrika. She texted the phone number the sponsor gave her, and someone then called Lisa from that phone number. Lisa testified that when she answered the phone, the caller on the other end remained silent. So Lisa said, "This is an emergency. Do you know Gavin Smith?" The person on the other end "sounded like a man trying to sound like a woman," and said, "No." Gavin's former sponsor also called Chandrika on May 2 to ask if she knew anything about Gavin. Lisa and Gavin's employer, Fox Studios, arranged to have missing person reports aired by various media outlets.

Los Angeles County Sheriff's Department detective Ty Labbe testified that he worked on the investigation. Defendant became a person of interest in the case due to Evan and Austin's statements. Labbe analyzed and mapped the locations, calls, and other data from defendant's, Chandrika's, and Gavin's cell phones in an effort to locate Gavin. Labbe testified that on the night of May 1 and the early morning of May 2, 2012, the three phones registered near the 8500 block of Fallbrook Avenue. Chandrika's phone then stayed in the area of her nearby residence, and defendant's and Gavin's phones "almost simultaneously traveled away from the area" where the crime occurred. The two phones stopped in the area of Valles's residence. The phones then traveled into the Kegel Canyon and Lopez Canyon area of Pacoima, and went to the area of McQuay's

home. The phone numbers defendant called that night were determined to belong to Valles and McQuay. Gavin's phone eventually stopped sending location information.

Detectives went to the Creech residence to interview Chandrika in mid-May 2012. As they approached the residence, they saw Chandrika's Audi pull into the cul-de-sac, stop short, make a rapid U-turn, and drive away.

Lim told detectives about the storage facility. The detectives found Gavin's Mercedes parked there. The car was preserved as evidence, and tested for fingerprints, blood, and DNA. Bloodstains inside the Mercedes and on the rear bumper matched Gavin's DNA. A criminalist testified that he could not determine how the blood got onto the back bumper, but it appeared to be a spatter stain, rather than being transferred from material contacting the bumper. The front license plate was missing from the car, and one of the screws to attach the plate was still on the car. DNA on that screw matched defendant's. The jury viewed the Mercedes during the trial.

On October 26, 2014, the Los Angeles County Department of the Coroner was notified that body parts had been discovered in the Angeles National Forest, near a well-maintained dirt road. The investigator testified that a partial human skull was found at the location, which was "missing most of the facial structure, as well as the lower jaw." It was located "a few yards south of what would later be found to be a clandestine grave." The "damage to the front of the skull and the absence of facial bones . . . was an indication of possible trauma." Blond hair was also found at the scene.

Investigators discovered human remains wrapped in a comforter and plastic sheeting, bound with duct tape, in a

shallow grave. The lower jaw was found nearby. The body was severely decomposed and partly “skeletonized,” meaning that much of the tissue was gone. It appeared that the skull and jawbone had been unearthed and moved by animals. “Large parts of the skull, especially the front, were simply missing or there were very small fragments that were also separated.” Screws and plates were found in forearm bones, which were consistent with an old injury of Gavin’s.

The remains were determined to be Gavin’s. The cause of death was “blunt cranial facial trauma,” and the manner of death was deemed to be homicide. The broken facial structure of the skull was a result of blunt trauma before death. The skull also had “radiating fractures,” which means “there’s an area of impact and . . . lines of fracture that radiate away from those areas.” There was an additional skull fracture at the base of the right eye socket, and another fracture on the left side behind the ear. The left lower cheekbone was “separate with some teeth still attached in the sockets.” There was also a fracture in the right forearm that occurred around the time of death, which indicated a defensive wound. The forensic pathologist testified that the damage could have been caused by fists, and because multiple fractures were present in different areas of the skull, the fractures were not caused by a fall.

## **B. Defense evidence**

Defendant testified on his own behalf. He testified that he met Chandrika in November 2003. He said that after Chandrika suffered some drinking problems, she was referred to Matrix by a therapist. In 2008, based on something Chandrika told him, defendant went to Matrix to file a complaint against Gavin. He denied confronting Gavin directly.

In 2010, defendant found some emails between Chandrika and Gavin. He testified that two of Gavin's sons came to his house in 2010, and "[t]he little one was crying." Defendant testified that he never threatened to kill Gavin, but he said that if Gavin stopped contacting Chandrika, "there won't be any problems."

Defendant said that on New Year's Eve, December 31, 2011, he took his wedding ring off before going out for the night, and told Chandrika, "I'm starting the year off right." By March 2012, he and Chandrika "agreed that [the relationship] was completely done."

On the evening of May 1, 2012, defendant found Chandrika "passed out" with a cigarette still in her hand. Later, around 11:00 or 11:15 p.m., Chandrika asked defendant to preheat the broiler so she could prepare her dinner. Defendant said he turned on the broiler, then went to watch television and dozed off. He was awakened when the broiler alarm sounded; he went to find Chandrika, but she was not in the house.

Defendant told Lim and Chandrika's grandmother that Chandrika was gone. Defendant activated the family locator app on his phone and discovered the location of Chandrika's phone in the 8500 block of Fallbrook. He knew the area was a 30-minute walk from his house. Chandrika's grandmother offered defendant the keys to her minivan to go get Chandrika.

Defendant found Chandrika's Audi, and saw her inside the other car that was parked nearby with a man that defendant said he had never seen before. He left the minivan's engine running and got out. Defendant testified that he knocked on the car, and Chandrika opened the door and said, "What the fuck are you doing here?" Defendant grabbed a set of keys off the dashboard,



threw them behind him into the landscaping, and said to Chandrika, “You need to walk home and sober the fuck up.”

Gavin cursed at defendant, and Chandrika got out of the car to look for the keys. Gavin was “still running his mouth,” so defendant walked over to him “to tell him to mind his own business,” but “[a]s soon as I leaned inside the car to tell him to mind his own business, he leans forward with a left and he punches me.” Defendant said Gavin also was “choking me in my throat, he’s got my head pinned against the ceiling, then he’s got his thumb in my right eye, so I’m hanging out the car with just my head inside as he’s choking me and gouging my eye out.” Defendant testified that he was “scared for my life.” Defendant tried to “fishhook [Gavin’s] mouth,” and then Gavin bit defendant’s thumb, leaving a “huge, big white mark on it.”

Defendant said that after some struggling between the two of them in the tight quarters of the car, he was able to hit Gavin in the left jaw. Defendant hit him four or five times, then rolled out of the car. Gavin got out of the car, and was spitting out blood. Gavin walked around the car, got into the driver’s side of the car, and shut the door. Chandrika got into the minivan and “took off.”

Defendant said he began looking in the bushes for Chandrika’s keys so he could drive the Audi home. Chandrika had turned the minivan around, and was driving back toward them. Defendant checked the Audi doors to see if they were unlocked, and then he and Gavin “ran into each other” between the Audi and Mercedes. In Gavin’s left hand was a “10- to 12-inch stainless steel thing that at the time I thought was a knife.” Defendant “tripped [Gavin’s] feet out,” they both fell to the ground, and they “went at it for 10 or 15 seconds, exchanging

punches.” When Gavin fell, “[h]e went face forward, hit his head, and I jumped on top of him and tried to punch him.” Gavin was hitting defendant “with that weapon,” which defendant later stated was a hammer. On cross-examination, defendant said it was a “multipurpose tool used for breaking car windows.” After this scuffle, Gavin “had blood . . . pouring out of his nose”; he got up and got into the driver’s seat of his car. Defendant took the hammer and put it in his pocket.

Chandrika took off in the minivan again, and defendant walked home. Defendant set the hammer down outside the back door and walked into the house; the house was unlocked. Defendant and Chandrika drove back to the scene to pick up the Audi. Chandrika dropped defendant off down the street and left. As defendant walked toward the Mercedes, he saw Gavin inside “with his eyes and mouth wide up [*sic*].” Defendant opened the door and said, “Gavin, Gavin,” but Gavin did not respond. Defendant also testified, “I pulled out my flashlight I brought to look for the keys, and I shined my light in his eyes to see if there was any response, no response. I put the flashlight underneath his nose to find out if there was any type of condensation. There was no condensation.”

Defendant thought Gavin needed to get to a hospital, because he did not know whether Gavin was dead or alive. He used the spare key to drive the Audi home to get Chandrika. Defendant said he did not call the police because he was out on bail at the time. When defendant returned to Gavin’s car a third time, he knew Gavin was dead. Defendant moved Gavin’s body from the driver’s seat into the passenger seat, covered it with a blanket, and drove the Mercedes home. He and Chandrika burned their clothing in the fireplace.

Defendant testified that he called Valles because he had a “secure yard” with a high fence, which offered “someplace secure to park the car until I talked to my attorney.” They went to Valles’s parents’ house, who also “had a secured parking spot with a driveway that was fenced that no one could get to.” Valles’s father said they could not park there. Valles suggested they drive up a canyon to look for a place to park. Everything was “too wide open,” so defendant called McQuay to see if he could park in McQuay’s garage. Defendant left the Mercedes with Gavin’s body in McQuay’s garage, and Valles drove him home.

Defendant had their home video recording system replaced; among other things, he wanted to get rid of the recording of Gavin’s car parked in front of the house. Defendant spoke with his attorney and then asked Lim to rent the U-Haul van. He bought plastic sheeting and other supplies and, with McQuay’s help, moved Gavin’s body into the van. Defendant parked the van at a warehouse for a couple of days, and meanwhile drove the grandmother’s minivan “looking for a place to temporarily put Gavin.” He dug a grave and then went back for the van and Gavin’s body, which he put in the grave.

Lim rented a storage space, and Chandrika gave the keys to the storage space to defendant’s attorney. Defendant testified that he was in jail when the Mercedes was moved into the storage space. Defendant said he threw the hammer over a fence near his house.

On cross-examination, defendant admitted writing the 2010 email stating, “I’m going to get you, Gavin. You’re fucked, you old prick.” He also testified that he was not trying to “get rid” of the hammer when he threw it over a fence; he said he

“threw it behind my house where I knew it would be all right.” He said there was no blood on the hammer. Defendant also said that Valles was lying about seeing defendant’s hand swollen and bloody, because defendant had wrapped his hand. Defendant admitted that he had used growth hormones within 24 hours of the crime. He also testified that he removed the front license plate from the Mercedes to make it less identifiable.

Defendant called Lim as a witness again, and she testified that when defendant came home on May 2, 2012, he told Lim that he had been in a fight, and the other man hit him first. On cross-examination, Lim said she did not see any injuries to defendant’s eye or neck.

The defense also called Valles to testify again, and he also stated that defendant told him Gavin swung first. On cross-examination, Valles said that defendant did not mention that Gavin had a weapon.

### **C. Prosecution’s rebuttal**

Justin Cade, Chandrika’s brother, testified on rebuttal that on May 3, 2012, he saw that defendant’s hand “was swollen roughly twice the size of its normal self.” Defendant told Cade that his hand had been hit by a garage door while helping a friend move. Defendant did not have any visible injuries on his face.

Brett Resnick testified on rebuttal that he worked with Gavin. He was on a business trip in Las Vegas with Gavin the weekend before Gavin’s death. Gavin “had to lie down in the back seat” on the drive back to the Los Angeles area because his back was bothering him. Resnick also testified that Gavin was “a peaceful guy.”

#### **D. Conviction and sentence**

The court instructed the jury, and included instructions relating to provocation and self-defense. The jury found defendant guilty of the lesser included offense of voluntary manslaughter (§ 192, subd. (a)).

Defendant filed a motion for new trial, asserting that the court should have allowed Lisa to testify about Gavin's character. The court denied the motion. The court sentenced defendant to the high term of 11 years. Defendant timely appealed.

### **DISCUSSION**

On appeal, defendant asserts two arguments. First, he contends that the trial court erred by barring defense counsel from questioning Lisa about Gavin's character, arguing that such evidence would have bolstered his self-defense theory. Second, defendant asks that we review the trial court's in camera review of peace officer records under *Pitchess, supra*, 11 Cal.3d 531. We find no error.

#### **A. Evidence of Gavin's character**

Defendant contends that the trial court erred in prohibiting defense counsel from questioning Lisa, Gavin's wife, regarding statements she made about Gavin to sheriff's deputies during the course of the investigation.

##### *1. Background facts*

In defense counsel's opening statements, she said that Lisa had characterized Gavin as "an angry, scary, intimidating, cruel man." Defense counsel said Gavin made fun of Lisa's weight, engaged in road rage incidents, and was "mentally abusive." Defense counsel also said that Lisa said something to the effect of, "You would need a gun against Gavin to stop him."

Counsel's statements were based on statements Lisa and Gavin's sister made to sheriff's deputies in the course of the investigation following Gavin's disappearance. According to the transcript of the interview, Lisa said that Gavin was "wonderful and sweet and loving. He's the most wonderful man." But sometimes "he's this angry, scary" "intimidating, cruel" person. Lisa clarified, "Not hurt like cruel," but "it's really a mental abuse." In a second part of the interview transcript, Lisa said that Gavin could be "very intimidating," and, "He's never hit me but he's scared me." Gavin's sister, who was also at the interview, said, "You'd almost have to have a gun in order to —" and Lisa said, "—to stop him." Gavin's sister continued, "—to stop him. Because he's just so presuming. He's just big."<sup>7</sup>

After the parties' opening statements, the prosecutor objected to the introduction of evidence of Gavin's character. The prosecutor argued that there was no evidence, such as police reports or convictions, indicating that Gavin was violent. The prosecutor also said that Lisa was not expected to testify that Gavin ever hit her or the children. Defense counsel asserted that Gavin's character was very relevant to defendant's claim of self-defense. In addition, defense counsel argued that Lisa told deputies that Gavin was violent, but told the grand jury Gavin was peaceful, and therefore Lisa's statements were admissible for impeachment purposes. The court stated that he wanted to hear from the witness before deciding whether the evidence was

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<sup>7</sup>In the record on appeal, this second portion of Lisa's interview transcript is attached to the motion for new trial. It is unclear whether this portion of the transcript was before the trial court at the time it made the evidentiary ruling at issue here.

admissible, and therefore ordered an Evidence Code section 402 hearing.

At the hearing, the court asked Lisa about her statement to police that Gavin could be intimidating and cruel. Lisa responded, “Before my husband got into rehab in March 2008, for about seven months or so before that he was not himself.” The court asked, “So those words were being used to describe that period of time?” Lisa answered, “Correct.” Lisa also testified that she had not been describing Gavin’s reputation in general, and that “[h]e wasn’t intimidating. I wasn’t afraid of him.” When defense counsel asked about Gavin yelling, Lisa said Gavin was hard of hearing and had a loud voice, but “[i]t’s not aggressive. It’s who he is.” The prosecutor asked Lisa if Gavin ever hit her or the children, and she responded, “Never.” The court asked Lisa if Gavin was violent, and she said, “He was not a violent man.”

The court held that the evidence of Gavin’s allegedly cruel statements was inadmissible. It stated, “I don’t think there is any basis for allowing this evidence in. Now that the witness has clarified what the statements were about, they appear to refer to a much earlier period of time, they don’t appear to be relevant as to whether or not the victim was violent and acted in conformity to that. . . .” The court noted that the time frame in which Gavin was “not himself,” according to Lisa, was “four or five years before” the homicide. The court said that the evidence was “not probative,” it was highly prejudicial, and it would confuse the jury. Therefore the court would not allow Lisa to be questioned about the issue before the jury.<sup>8</sup> The court later added that

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<sup>8</sup>Defense counsel requested a mistrial, asserting that she had been allowed to discuss evidence in her opening statement that was now barred from trial. The court denied the motion.

“whatever character of aggressiveness and anger that Mr. Gavin Smith may have had, it seemed to be related to his drug use and not his character.” The court also said that any evidence that Gavin was “a bad husband or even an angry person” was not relevant to the issue of defense.

## 2. *Discussion*

On appeal, defendant argues that the court barred testimony by Lisa “about prior incidents where her husband had become violent.” Defendant states, “As the defense theory of the case was that Gavin had started the fight and that [defendant] only reacted in reasonable self-defense, Gavin’s tendency towards violence was critical to the defense theory of the case.” Defendant asserts that the trial court’s error in excluding this evidence violated his Sixth Amendment right to confront and cross-examine witnesses, interfered with his right to present a defense, and infringed upon his Fifth Amendment right to a fair trial.

Generally, character evidence is inadmissible. (Evid. Code, § 1101, subd. (a).) However, “[i]n a criminal action, evidence of the character . . . of the victim of the crime” may be admissible where the evidence is “offered by the defendant to prove conduct of the victim in conformity with the character or trait of character.” (Evid. Code, § 1103, subd. (a)(1).) Thus, a defendant who asserts self-defense may present “evidence of the violent character of the victim . . . to show that the victim was the aggressor.” (*People v. Shoemaker* (1982) 135 Cal.App.3d 442, 446.) “Under Evidence Code section 1103, such character traits can be shown by evidence of specific acts of the victim on third persons as well as by general reputation evidence.” (*People v. Wright* (1985) 39 Cal.3d 576, 587.) “The admission of such



character evidence . . . is subject to the dictates of Evidence Code section 352.” (*Ibid.*) “[W]e afford trial courts wide discretion in assessing whether in a given case a particular piece of evidence is relevant and whether it is more prejudicial than probative.” (*People v. Duff* (2014) 58 Cal.4th 527, 558.)

Although defendant asserts that the trial court barred evidence of Gavin’s “violent” character, the record does not support this claim. At most, Lisa’s statements to the deputies demonstrated that that Gavin could be verbally abusive toward Lisa. Lisa never made any statements suggesting that Gavin was physically violent in any way, and in the evidentiary hearing, she made clear that Gavin had never been violent with her. As the trial court correctly noted, whether Gavin was “a bad husband or even an angry person” was not relevant to defendant’s self-defense claim. Even assuming Gavin had been verbally abusive toward Lisa, that would not support defendant’s theory that Gavin had a violent character and therefore was the aggressor in the confrontation.

Moreover, the trial court did not err in finding that Lisa’s statements related to a timeframe that was too remote to be relevant to the crime. Lisa clarified at the evidentiary hearing that when she spoke to investigators about Gavin being cruel or intimidating, she was referencing his actions when he was abusing drugs, before he received treatment for his addiction in 2008—more than four years before the crime. “At some point in time . . . evidence of the victim’s character becomes too remote to have any probative value and thus becomes irrelevant.” (*People v. Shoemaker, supra*, 135 Cal.App.3d at p. 448.) The trial court did not abuse its discretion in finding that the evidence here was too remote to be reasonably probative. Moreover, Lisa testified

that during this timeframe Gavin was “not himself,” suggesting that his typical demeanor was not that of an abusive or cruel person. The trial court’s conclusion that this evidence would be more prejudicial than probative under Evidence Code section 352 was not erroneous.

Defendant argues that the court’s limitation on his cross-examination of Lisa interfered with his constitutional rights to confront witnesses and to a fair trial. A defendant “has a due process right to present evidence material to his defense so long as the evidence is of significant probative value.” (*People v. Shoemaker, supra*, 135 Cal.App.3d at p. 450.) Here, the evidence was not probative, and the exclusion of it was not erroneous.

**B. *Pitchess* hearing**

Before trial, defendant filed a motion pursuant to Evidence Code section 1043 and *Pitchess, supra*, 11 Cal.3d 531, requesting records of investigations and disciplinary actions relating to Glendale Police Department officer David Kellogg and Los Angeles County Sheriff’s Department detectives Ty Labbe and Tamar Abraham. Defendant argued that these officers falsified reports or coerced witnesses into fabricating statements. On appeal, defendant requests that we independently review the court’s *Pitchess* hearing. The Attorney General does not oppose this request. “*Pitchess* rulings are reviewed for abuse of discretion.” (*People v. Winbush* (2017) 2 Cal.5th 402, 424.)

“When a defendant shows good cause for the discovery of information in an officer’s personnel records, the trial court must examine the records in camera to determine if any information should be disclosed.” (*People v. Winbush, supra*, 2 Cal.5th at p. 424.) At the in camera hearing, “[t]he trial court should . . . make a record of what documents it examined before ruling on the

*Pitchess* motion. . . . [T]he court can . . . state for the record what documents it examined.” (*People v. Mooc* (2001) 26 Cal.4th 1216, 1229.) An appellate court independently examines the record made by the trial court “to determine whether the trial court abused its discretion in denying a defendant’s motion for disclosure of police personnel records.” (*People v. Prince* (2007) 40 Cal.4th 1179, 1285.)

The trial court conducted two separate in camera hearings, one with the custodian of records for the Glendale Police Department, and one with the custodian of records for the Los Angeles County Sheriff’s Department. The court reviewed the officers’ records for “complaints involving dishonesty,” “complaints involving false reports,” and “complaints involving fabrication of evidence.” Following in camera review, the court determined the records contained no relevant discoverable information. The court sealed the reporter’s transcript of the in camera hearing.

We have reviewed the sealed transcript of the in camera hearing. We conclude that the court complied with the procedural requirements of a *Pitchess* hearing, including an adequate description of the documents provided to it, and that the court did not abuse its discretion in its rulings.

**DISPOSITION**

The judgment is affirmed.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

COLLINS, J.

We concur:

MANELLA, P. J.

WILLHITE, J.